

Establishment Name : Tower Services, Inc.

CSHO/Optional : S0082 / 019-06
Report #

Federal Inspection : 309215985

INSTANCE DESCRIPTION

Description of hazard(s): Falls. An employee fell 380 feet to the ground level below.

Description of employee(s) exposure and how often: According to employees one and two they had just began working on this cell phone tower site the day before. This was their first full day on the job site when the fatality occurred. On May 02, 2006, there were two employees working at the 380 and 300 foot elevations preparing to install new transformers and receivers and the electrical power cables. Two employees were directly exposed, at the point of danger zone, under high stress due to the fact neither of them were utilizing appropriate lanyards to prevent falls. It was a common practice on Mr. Dewayne Wilder's work crew not to attach or use the lanyards. Working from such elevations was a normal part of the employees' duties.

Employer knowledge: Mr. Dewayne Wilder, Foreman, for Tower Services, Inc. was present and working on the jobsite when the his employees began climbing the cell phone tower; therefore, if had performed his duties as required by 29 CFR 1910.268(g)(1), 29 CFR 1926.20(b), 29 CFR 1926.32(f), 29 CFR 1926.501(b)(2)(ii), he could have detected that the employees were not utilizing fall protection, and he could have taken immediate corrective actions to ensure compliance with the regulations.

Because Mr. Wilder was working on site and this condition was in plain sight, the hazardous condition was readily apparent. With the exercise of reasonable diligence, Mr. Wilder could have verified that the employees had the appropriate lanyards before the employees climbed the cell phone tower. By using binoculars to observe the employees working on the tower, he could have detected whether the employees were properly utilizing the lanyards. At the time the employee fell to his death, the employees had not taken the lanyards with them up on the tower. Appropriate lanyards to connect between the employees' harnesses and the tower were available on site in the company truck.

Tower Services, Inc. has a comprehensive written Employee Safety Manual which addresses employee disciplinary actions, job hazard assessments, tool box safety talks and competent person logs which were not being completed prior to the fatality that occurred on May 02, 2006. In April of 2006 prior to the May 02, 2006, fatality Mr. Wilder attended fall protection training, and was aware of the requirements to ensure full fall protection for the employees working on elevated surfaces.

The employer demonstrated knowledge of the requirement by including competent person logs in the safety program which were to be completed by a competent person.

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Location of violation(s): A Bluegrass Cellular Tower located at 700 Youngstown Road, Central City, Kentucky 42330.

Describe violation(s): On or around May 02, 2006, Mr. Dewayne Wilder, Foreman for Tower Services, Inc., did not conduct frequent and regular inspections of the job site, materials and equipment did not take prompt corrective measures to eliminate fall hazards for the employees working on the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky. No other competent person designated by the company conducted the inspections or took any corrective action. Mr. Wilder indicated that no one from the company told him he was a designated competent person. If that is the case, the company should have either designated Mr. Wilder as a competent person or designated someone else to fulfill that function. The company safety program included inspection logs to be filled out by a competent person. The logs were left blank. The company had no effective procedure in place to ensure the logs were being completed or that the inspections were even taking place.

The standard calls for frequent and regular inspections to ensure compliance with the regulations and to prevent accidents. Competent person is defined under 29 CFR 1926.32(f) as one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. Mr. Wilder had received training in fall hazards and methods to abate those hazards only a few weeks prior to the accident. As foreman, he had the authority to take corrective action. He took no steps to eliminate the hazard of falling off of a tower while members of his crew were working at heights up to approx. 380 ft. The company safety program indicates that the inspections by a competent person should take place. However, the company had no procedures in place to ensure that their foremen or other designated competent persons acted appropriately in identifying hazards and taking the prompt corrective action to eliminate them.

On May 02, 2006, at approximately 10:15 hours Mr. Michael Sulfridge, Tower Technician working for Tower Services, Inc., was fatally injured with he fell approximately 380 feet when he fell from a Bluegrass Cellular cell phone tower. The employees were in the process of installing the new transmitting and receiving equipment onto an existing tower. The other employee was working below the victim at approximately 300 feet. Neither of the employees were using fall protection other than a two foot long positioning cable that they were attaching to the climbing safety device while climbing up or down the tower. The climbing safety device was already attached to one side of the tower when the employees arrived to make the needed construction modifications.

According to employees one and two, they stated that once they would reach the working height on any cell phone tower they would then disconnect

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their positioning cable and then work the 360 degrees around the tower structure without using appropriate lanyard(s). Lanyards could have been used as part of a positioning system to prevent falls or as part of a fall arrest system to arrest a fall. On the day of this inspection none of the employees were utilizing lanyards for fall protection, but they were all wearing body harnesses.

Employees one and two each verified in my employee interviews that it was common practice for them to work **on virtually all cell phone towers** without using lanyards attached to their body harnesses. Mr. Doug Udegraff, Group Manager for Wireless Network, with Bluegrass Cellular Company stated that Tower Services has almost exclusively worked for them for more than two years prior to this fatal accident.

In my interview with Mr. Dewayne Wilder, Foreman for Tower Services, he confirmed what employees one and two informed me about the employees rarely using the lanyards. He said it was common to use the body harnesses with the two-foot long cable to connect to the climbing safety devices installed on the towers but once the employees disconnected from the climbing safety device, they worked without being attached to anything.

Employee number one, a tower technician, stated that he had been working on the Central City, Ky. cell phone tower site on the day of the accident and on the day before the accident that occurred on May 02, 2006. He stated that since they began working for Tower Services, Inc., lanyards have seldom been used for fall protection.

Employee number one stated that he had been working on Mr. Wilder's crew for over two years. He said had worked with Mr. Sulfridge for almost a year. He stated that they do wear the body harnesses, and generally use a positioning cable to attach to the tower's climbing safety device, but once they get to the desired level to perform the work, they un-attached from the climbing safety device and did not use lanyards to attach their harnesses to the tower while performing the work. Employee number one stated he actually reached out and tried to catch him and was unsuccessful. Employee one stated that neither he nor Mr. Sulfridge was wearing a safety lanyard (bungee cord) when the fatal accident occurred.

Employee number two, a tower technician, stated that he was present when Mr. Sulfridge fell from the tower onto the ground. Employee number two stated that he was on working on the ground level at the time Mr. Sulfridge fell to his death.

Employee number two stated that he had worked from Mr. Dewayne Wilder's crew with Tower Services, Inc., for almost eight months. He stated that just a few weeks earlier in April 2006, he received his first fall protection training, but had been climbing on the cell phone towers on Mr. Wilder's crew for at least eight months prior to receiving fall protection training. Employee number two stated that he has climbed on Bluegrass Cell Phone towers in Elizabethtown, Central City, Corbin, Bowling Green, Somerset and other cities without utilizing fall protection. See

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Appendix "B" for the Bluegrass Cellular map which shows the locations of their tower locations in the state of Kentucky.

Employee number two stated that he had worked since the first day with Mr. Sulfridge and that neither of them used a lanyard on a regular basis, and they had become accustomed to working without them. Employee number two stated that he had worked for the company almost 13 months before receiving any kind of fall protection training. The majority of the time he had been employed by the company he had worked on Mr. Wilder's crew. He had a training card which indicated that he had just received his initial fall hazard training in April 2006. Employee number two also stated that Mr. Sulfridge also received his first fall hazard training in April of this year as well, and his hire date was May 16, 2005; therefore, the April 2006 training occurred more than 10 months after Mr. Sulfridge had already been exposed to falls while working on cell tower making repairs and adjustments.

On May 2, 2006, I conducted an interview with Mr. Dewayne Wilder, Foreman for Tower Services, Inc., and he informed during the interview that Mr. Sulfridge was not wearing a lanyard (bungee) nor was employee number one. Mr. Wilder confirmed and stated that before the two employees climbed on the cell tower that he did not take the time to observe and ensure that his employees were utilizing lanyards (bungee cords) and he did not make any onsite observations while they were exposed while working on the cell tower either. Mr. Wilder also stated that he did not have binoculars to observe and detect whether the employees were actually wearing and utilizing lanyards (bungee cords) while the employees were working on any cell phone towers.

As of May 02, 2006, my investigation has revealed that neither of the two exposed employees working on the cell phone tower were utilizing the available lanyards, and this was a common practice on virtually all cell phone tower sites. No employees have been previously disciplined for violations of safety and health laws, rules and company policies, and particularly for not wearing and using lanyards.

Mr. Dewayne Wilder, Foreman was onsite the entire time and he neglected to act as a competent person. According to Mr. Wilder, on-site tool box safety meetings have been rarely conducted to discuss safety hazards and to increase awareness of hazards they are facing. All of my employee interviews were also witnessed by Mr. Tony Armour, Mullenberg County Coroner. As I was conducting my walk around inspection of the accident site, and I was using my video camera to record the site, I was also asking Mr. Wilder questions. The video tape confirms my finished notes as to what Mr. Wilder said.

Tower Services, Inc. has a comprehensive written Employee Safety Manual which addressed employee disciplinary actions, job hazard assessments, tool box safety talks and competent person logs which were not being completed prior to the fatality that occurred on May 02, 2006. In

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April of 2006 prior to the May 02, 2006, fatality, Mr. Wilder attended fall protection training and was aware of the requirements to ensure full fall protection for the employees working on elevated surfaces.

Appendix "A" Mr. Tony Armour, Mullenberg County Coroner, also wrote me a letter summarizing his observations which he has signed and this letter can be found in Appendix "A" of this report which Mr. Armour has stated to me that he is willing to testify in OSH hearing proceedings. The letter is as follows:

"On May 02, 2006, I accompanied you during the course of your fatality investigation. I was present during your employee interviews of three employees whose job duties are to climb on the cell tower to make adjustments, repairs, and replace parts or install new equipment.

I was present as you interviewed three separate employees who work for Tower Services Company from Hixson, Tennessee. All three of the Tower Services employees stated that it was a regular practice to climb the cell towers without using a safety lanyard once they disconnected from the climbing safety positioning device.

All of the employees stated that it was not only a regular practice, but they had been working on Mr. Dewayne Wilder's construction crew for almost one year without using the lanyards with the safety harnesses. They also stated that they seldom, if ever, even had the lanyards attached to their safety harnesses before climbing on the cell towers, and Mr. Wilder was their foreman and was always present with them.

The three employees also stated that Mr. Wilder never enforced the usage of the lanyards, and he never verified during the course of a work shift that they were using them. During the course of the fatality investigation you asked Mr. Dewayne Wilder if he had conducted any daily checks to verify that his employees were actually wearing the safety harnesses with lanyards attached when working from the elevated surfaces while on the cell towers and he stated that he had not.

You also asked him if he had any binoculars to look up at the employees working on the cell phone tower(s) to see if they were using any fall protection and he stated that he did not have any binoculars to monitor the employee's usage of fall protection. You also asked Mr. Wilder if he had ever disciplined any employees in the past for not wearing fall protection when working on any elevated surfaces over the past year, and Mr. Wilder stated that he had not disciplined any of his employees for anything in the past.

You also asked Mr. Wilder if he was trained by his employer as a competent person and was he told by his employer that as the foreman/supervisor he was responsible to ensure the usage of the fall protection? Mr. Wilder stated that he has never been trained as a competent person, and he was not informed that he was to enforce the

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usage of the fall protection equipment. Mr. Wilder also stated that he, and his other employees working on his construction team all had to purchase their own fall protection equipment, and his employer would deduct the cost of the safety personal protection equipment from their pay checks.

During the course of the fatality investigation you also interviewed Mr. Daniel Combs, Wireless Field Operations Manager for Bluegrass Cellular. I was present when you questioned Mr. Combs about his duties and how often he visited the cell phone tower sites. Mr. Combs stated that he does travel from time to time to the different sites to check on the progress of the work being performed, and that he had observed the workers for Tower Services Company in the past working on their cell phone tower equipment."

Appendix "D" of this report provides photo copies of the fall protection training records for the last four years. The last fall protection training was finalized in April of 2006. The photocopied fall protection cards shows that Mr. Dewayne Wilder, Job Site Foreman received his training on February 15, 2006 and Mr. Michael Sulfridge received his training on March 31, 2006. Mr. Sulfridge has been working for almost one year prior to receiving any fall protection training from his employer. He was fatally injured thirty-two days later when he fell approximately 380 feet from the cell phone tower.

Appendix "F" of this report provides the only copies of previous disciplinary actions that were taken prior to May 02, 2006. During the course of fatality investigation I asked Mr. Dewayne Wilder, Job Site Foreman if he had in the past ever issued any disciplinary actions for when the employees were not wearing the required personal protective equipment or for any other safety or health hazard, and he stated that he has never done so.

Also during the course of my investigation I asked Mr. Kerry Klimeck, President of Tower Services and Ms. Johanna Hartley, Office Manager and Administrative Secretary for Tower Services if they were aware of or if they had issued any disciplinary actions for when their employees were not following safety and health laws and policies and their response was no. Therefore, prior to the May 02, 2006, fatality which occurred in Central City, Kentucky, the employer has never disciplined any employees for not using the required fall protection equipment or for any other instance where an employee was exposed to a hazardous condition where they could have been seriously hurt or fatally injured.

Appendix "G" of this report provides the only copies of previous Job Hazard Analysis reports that were completed after the May 02, 2006, fatality in Central City, Kentucky. During the course of fatality investigation I asked Mr. Dewayne Wilder, Job Site Foreman if he had in the past performed and recorded any Job Hazard Analysis of the work site prior

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beginning work and continued to hazard analyze the process through the entire time the employees were working on the job site. He stated that he had never in the past performed a job site analysis on any job sites prior to May 02, 2006.

Also during the course of my investigation I asked Mr. Kerry Klimeck, President of Tower Services and Ms. Johanna Hartley, Office Manager and Administrative Secretary for Tower Services if they were aware that any of their Supervisors out on the cell phone job sites were performing the job hazard analysis and if they had any photo copies of such evaluations and Mr. Klimeck and Ms. Hartley each stated that to their knowledge such job hazard analysis had never been completed prior to May 02, 2006.

Completion of the job hazard analysis and filling out a survey form makes the Supervisors accountable and ensures he is aware what the employees will be exposed to before the work begins to ensure that the proper personal protective equipment, employee training, and other vital safety and health provisions are being maintained on the job sites.

The employer's own Safety Manual which can be found in Appendix "E" of this report addresses conducting job hazard analyses which is found in the written language in Chapter One Sections 1.1.4, 1.1.12, 1.1.13, 3.0, 3.1, 3.3, 3.6, 5.0, 5.1 - 5.3.3, 6.0, specifically sections 6.1, 6.1.1, 6.1.2, 6.1.3, 6.1.8, 8.6. Chapter Six "Tower Practices Guidelines" Section 5, Section 7 "Climbing Hazards," Section Eight "Pre-Climb Planning and Inspection," Section 10 "Site Inspections," Section 16 "100% Tie-Off Climbing Procedures," Section 21 "Personnel Lifting Procedures," 24 "Pre-Lift Meeting," Section 26 "Criteria for Hoisting the Employee(s) to the Workstation." Chapter Seven "General Safety Rules" in Section XVII covers safety rules for fall protection. Chapter 14 "Hazard Identification Pre-Job Checklists" includes on the checklist form "**Fall Protection reviewed.**" Therefore, prior to the May 02, 2006, fatality which occurred in Central City, Kentucky, the employer has never completed their own pre-job "**Hazard Identification Pre-Job Checklist.**"

Safety Manual Outline:

Chapter One "Health and Safety Program"

b. **Section 1.1.4: Inspection**

- **Section 1.1.12: Accountability**
- **Section 1.1.13: Compliance Reviews**
- **Section 3.0: Responsibilities For Safety**
- **Section 3.1: Senior Management**
- **Section 3.3: Site Supervisor**
- **Section 3.6: Tower Climber**
- **Section 5.0: Safety Training**
- **Section 5.1: Safety Training for Supervisors**
- **Section 5.3.3: Induction Safety Topics for Workers and Subcontractors**

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- Section 6.0: Site Planning And Housekeeping
- Section 6.1: Initial Planning
- Section 6.1.1: Hazard Identification Plan
- Section 6.1.2: Health and Safety Program
- Section 6.1.3: Protection of Employees and Equipment
- Section 6.1.8: Fall Prevention and Climbing Procedures
- Section 8.6: Fall Restraining/Arresting Devices

Chapter Six "Tower Practices Guidelines"

- Section 5: Evaluation
- Section 7: "Climbing Hazards"
- Section 8: "Pre-Climb Planning and Inspection"
- Section 10: "Site Inspections"
- Section 16: "100% Tie-Off Climbing Procedures"
- Section 21: "Personnel Lifting Procedures"
- Section 24: "Pre-Lift Meeting"
- Section 26: "Criteria for Hoisting the Employee(s) to the Workstation"

Chapter Seven "General Safety Rules"

- Section XVII: Safety rules for fall protection.

Chapter 14 "Hazard Identification Pre-Job Checklists."

Appendix "H" of this report provides the only copies of documented In-House Accident Reports. Prior to the fatality on May 02, 2006, the employer was not conducting and maintaining records on any previous work related accidents. This was confirmed by Mr. Dewayne Wilder, Job Site Foreman, for Tower Services, Mr. Kerry Klineck, President of Tower Services and Ms. Johanna Hartley, Office Manager and Administrative Secretary for Tower Services.

Appendix "I" of this report provides the only copies of Tool Box Safety Talks that were conducted and recorded after the May 02, 2006, fatality investigation. This was confirmed by Mr. Dewayne Wilder, Job Site Foreman, for Tower Services, Mr. Kerry Klineck, President of Tower Services and Ms. Johanna Hartley, Office Manager and Administrative Secretary for Tower Services.

Appendix "J" of this report provides the only copies of Competent Person logs that were being documented and recorded after the May 02, 2006, fatality. This was confirmed by Mr. Dewayne Wilder, Job Site Foreman, for Tower Services, Mr. Kerry Klineck, President of Tower Services and Ms. Johanna Hartley, Office Manager and Administrative Secretary for Tower Services.

This item is being written as a high greater willful serious violation because the most likely injury is death. It is willful because the employer recognized the hazard and documented in the company safety program

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the procedures to prevent the hazard. Yet the employer never enforced their fall protection procedures, never required their site foremen to perform job site hazard analyses or enforce their safety program and never disciplined any employees for failing to use fall protection. Employees one and two verified in my employee interviews that it was commonplace for them to work on all cell phone towers without using lanyards. In my interview with Mr. Dewayne Wilder, Foreman for Tower Services he confirmed what employees one and two informed me about the employees rarely using the lanyards as part of a fall arrest system or a positioning system. It was common to use the body harnesses with the two-foot long cable and the climbing safety devices installed on the towers.

Description of equipment involved with violation: Cell phone tower and fall protection equipment.

Other Appendix References:

- Appendix "B"** Copy of the Bluegrass Cellular Company cell phone tower map for all of their locations in the state of Kentucky where they have cell phone tower locations.
- Appendix "C"** Letter of Confidentiality from Bluegrass Cellular Company related to confidential documentation provided in the this report and evidence that supports this case file.
- Appendix "M"** Establishing the criteria and the research basis for the issuance of citations in the 29 CFR 1926. Construction Regulations -vs- Citing the 29 CFR 1910. General Industry Regulations:
- Appendix "N"** Countering the Employee Misconduct Defense

ADDITIONAL INFORMATION: A willful violation exists under the Law where the evidence shows either an intentional violation of the Law or plain difference to its requirements. A willful violation may exist under KRS Chapter 338 where the evidence shows:

(1). **The nature of the employer's business and the knowledge regarding safety and health matters which could reasonably be expected in the industry.** Mr. Dewayne Wilder, Foreman for Tower Services had received training for fall protection hazards in the month of April 2006. He and the other two employees had a laminated card which showed their certification of training in the previous month. Mr. Tony Armour, Mullenberg County Coroner presented me with Mr. Sulfridge's certification training card for fall protection. Tower Services performs work for Bluegrass Cellular Company. Mr. Doug Udegraff, Group Manager for Wireless Network, with Bluegrass Cellular Company stated that Tower Services has almost exclusively worked for them for more than two years prior to this

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fatal accident. Therefore, Tower Services, Inc., is aware of the nature of the business and that fall hazards are extremely prevalent in the nature of their industry. The Tower Services, Inc. safety manual addresses fall hazards and how to ensure that the employees are to be protected when working on elevated heights; therefore, the company had the knowledge regarding safety and health matters which could reasonably be expected in the industry.

(2). The precaution taken by the employer to limit the hazardous conditions. In my interview with Mr. Dewayne Wilder, Foreman for Tower Services, he confirmed what employees one and two informed me about the employees rarely using the lanyards to connect to their harnesses. It was common to use the body harnesses with the two-foot long cable to attach to the climbing safety device installed on one side of the tower. Mr. Wilder confirmed and stated that before the two employees climbed on the cell tower that he did not take the time to observe and ensure that his employees were utilizing lanyards (bungee cords). He did not make sure they even had their lanyards with them when they climbed the tower. He did not make any onsite observations while they were exposed to falls while working on the cell tower either. Mr. Wilder stated that he did not have binoculars to observe and detect whether the employees were properly tied off while working on any cell phone towers.

(3). The employer's awareness of the law and the responsibility to provide safe and healthful working conditions. Mr. Dewayne Wilder, Foreman for Tower Services had knowledge of the 1926.500 through 503 construction standards because they had just completed fall protection training. The employer also demonstrated knowledge in that the employees were wearing body harnesses with the two-foot long cables to use with the climbing safety device installed on the tower. The employees were using the climbing safety device for purpose of ascending and descending the cell phone tower, but once they reached the level where they were to perform the work they would disconnect and did not use fall protection. On this day Mr. Sulfridge and employee number 1 was not wearing a lanyard or lanyards to prevent falls. The lanyards were laying in the back of Mr. Dewayne Wilder's pickup truck. The Tower Services, Inc. safety manual addresses fall hazards and how to ensure that the employees are protected when working on elevated heights, and distinguishes the difference between a positioning device (cable or short lanyard less than two (2) feet) and other fall protection systems. Mr. Dewayne Wilder, Foreman, had the knowledge regarding safety and health matters which could reasonably be expected in the industry.

(4). Whether similar violations and / or hazardous condition have been brought to the attention of the employer. Mr. Dewayne Wilder, Foreman for

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Tower Services stated that he was aware of the hazardous conditions through receiving formal training and even though the company has never been cited in the past for noncompliance.

(5). Whether the nature and extent of the violations disclose a purposeful disregard of the employer's responsibility under the law. In my interview with Mr. Dewayne Wilder, Foreman for Tower Services he confirmed what employees one and two informed me about the employees rarely using the lanyards as part of a fall arrest or positioning system, but it was common practice to use the body harnesses with the two-foot long cable to attach to the climbing safety device. Mr. Wilder confirmed and stated that before the two employees climbed on the cell tower that he did not take the time to observe and ensure that his employees had the necessary lanyards to tie off while working on the tower. He did not make any onsite observations while they were exposed to falls while working on the cell tower either. Mr. Wilder stated that he did not have binoculars to observe and detect whether the employees were tied off while working on any cell phone towers. The lanyards were available on the job site and were laying in the back of the Tower Services, Inc., pickup truck which was also observed by Mr. Tony Armour, Mullenberg County Coroner.

The Employee Misconduct Defense:

On May 02, 2006, I conducted fatality investigation of Mr. Michael Sulfridge, Tower Technician who fell approximately 380 feet from a Bluegrass Cellular cell phone tower, in Central City, Kentucky.

The cell phone tower was being retrofitted with new updated receiving and transmitting equipment, and the new equipment was being added onto an existing cell phone tower.

As a part of this fatality investigation I am also answering key questions which determine if an employer was at fault and should be issued citations as a result of an apparent violation, or if the employer can demonstrate that they are and have met the Employee Misconduct Defense. Therefore, I am answering the following question in order to counter any of Tower Services, Inc., misconduct defenses.

The Employee Misconduct Defense: Countering. Justification for the issuance of the apparent Willful Serious Citations.

The employee misconduct defense states that when an employee is negligent or creates a violation by not following established training, instruction, and/or procedure the employer can assert an affirmative defense by showing:

Q1). Does the employer have an effective S&H Program designed to prevent the violation of this instruction or procedure? No. This is because

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in order for the employer to have an effective safety and health programs the foreman on the job sites must implement its provisions and ensure that the employees on the job sites are provided with and are wearing all of the required protective equipment. Which in this case, body harnesses were available and were being worn, but the lanyards that were available and left laying in the back of the foreman's utility vehicle (pickup truck) was not being used. On the day of the fatality, two employees were exposed and working at the approximate 380 and 300 foot levels on the cell phone tower without wearing the lanyards which would have prevented the fall if they were being worn and utilized.

Q2). Does the employer have an effective training program / instructions for the procedure? The employer just completed fall protection training in April of 2006 just a few weeks before Mr. Sulfridge fell the approximate 30 from the cell phone tower. It is readily apparent that a failure of the provided training and not enforcing the provided training thus ensuring that the fall protection training was not only effect, but was being full implemented and complied with.

Q3). Does the employer have a means of discovering violations for the procedure / instruction? The foreman was on the jobsite the entire time from the first day of work which began on approximately April 30th, 2006. While Mr. Dewayne Wilder, Foreman, for Tower Services, Inc., was on the jobsite, he made an effort to observe his employees to ensure that they were utilizing all of the fall protection equipment. While the employees were working approximately 380 and 300 feet from the ground, Mr. Dewayne Wilder, Foreman, for Tower Services, Inc., should have been utilizing binoculars to watch them from the ground to ensure the usage of the fall protection equipment. Additionally, the foreman was not conducting any morning safety checks before the work began, did not monitor the employees activities throughout the work shift, and he was aware that on May 02, 2006, the employees were not utilizing the lanyards that were laying in the back of the company utility vehicle either. Mr. Dewayne Wilder, Foreman, for Tower Services, Inc., also admitted that it has been a regular practice in the past that he has not enforced or required that his construction team use such equipment. Employees one and two each stated that it was a common practice not to use the lanyards for fall protection.

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Q4). Does the employer have a means of enforcement of their safety rules and procedures? Yes the employer had the means to enforce the usage of the fall protection equipment. The foreman simply chooses to ignore the fall protection requirements which resulted the fatal death of Mr. Michael Sulfridge. Mr. Dewayne Wilder, Foreman, for Tower Services, Inc., also stated that he himself has never issued any employee disciplinary actions for the failure of the employees not wearing the fall protection equipment, and corporate offices in Hixson, Tennessee was not able to provide me with any previous employee reprimands to demonstrate that they were enforcing the OSHA 29 CFR 1926. regulations.

Conclusion: The employer has demonstrated that they accepted the practice of not wearing the protective lanyards for fall protection; therefore, they can no longer consider this to be an employee misconduct.

OSH-170 Statistics: Mr. Michael Allen Sulfridge, Tower Technician, 461 Mr. Harmon Road, Harrogate, Tennessee 37752, DOB: October 24, 1983, DOW: May 16, 2005, and DOD: May 02, 2006.

PHOTOGRAPHS SUPPORTING VIOLATION

Description: Photograph # 2 shows the utility cell phone tower that Mr. Sulfridge fell from and landed on the ground. On May 02, 2006, at the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky, where the employer did not ensure that wearing of appropriate personal protective equipment such as lanyards attached to body harnesses were being used to prevent falls of approximately 360 feet, for all exposed employees, which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 3 shows the utility cell phone tower that Mr. Sulfridge fell from and landed on the ground. On May 02, 2006, at the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky, where the employer did not ensure that wearing of appropriate personal protective equipment such as lanyards attached to body harnesses were being used to prevent falls of approximately 380 feet, for all exposed employees, which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 4 shows the utility cell phone tower that Mr. Sulfridge fell from and landed on the ground. On May 02, 2006, at the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky, where the employer did not ensure that wearing of appropriate personal protective equipment such as lanyards attached to body harnesses were being used to prevent falls of approximately 380 feet, for all exposed employees, which resulted in the fatality of Mr. Michael Allen

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Sulfridge, Tower Technician.

Description: Photograph # 6 shows the utility cell phone tower that Mr. Sulfridge fell from and landed on the ground. On May 02, 2006, at the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky, where the employer did not ensure that wearing of appropriate personal protective equipment such as lanyards attached to body harnesses were being used to prevent falls of approximately 380 feet, for all exposed employees, which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 7 shows the utility cell phone tower that Mr. Sulfridge fell from and landed on the ground. On May 02, 2006, at the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky, where the employer did not ensure that wearing of appropriate personal protective equipment such as lanyards attached to body harnesses were being used to prevent falls of approximately 380 feet, for all exposed employees, which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 08 shows the actual area of impact on the ground where Mr. Sulfridge landed on the ground which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 09 shows the actual area of impact on the ground where Mr. Sulfridge landed on the ground which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 10 shows the actual area of impact on the ground where Mr. Sulfridge landed on the ground which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 15 shows the utility cell phone tower that Mr. Sulfridge fell from and landed on the ground. On May 02, 2006, at the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky, where the employer did not ensure that wearing of appropriate personal protective equipment such as lanyards attached to body harnesses were being used to prevent falls of approximately 380 feet, for all exposed employees, which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Description: Photograph # 16 shows the utility cell phone tower that Mr. Sulfridge fell from and landed on the ground. On May 02, 2006, at the Bluegrass Cellular cell phone utility tower facility located in Central City, Kentucky, where the employer did not ensure that wearing of appropriate personal protective equipment such as lanyards attached to body harnesses were being used to prevent falls of approximately 380 feet, for all exposed employees, which resulted in the fatality of Mr. Michael Allen Sulfridge, Tower Technician.

Establishment Name : Tower Services, Inc.

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Description: Photograph # 17 shows the OSH fatality investigation jobsite where Tower Services, Inc., was working on a Bluegrass Cellular cell phone 400' high tower installing new transmitters and receivers, located at 700 Youngstown Road, Central City, Kentucky. This photo shows the cell phone tower that Mr. Sulfridge fell the approximate 380 feet to the ground below. This photograph was actually taken from Highway 431 South, Central City, Kentucky sitting in the cloverleaf area of the Western Kentucky Parkway.

Description: Photograph # 18 shows the OSH fatality investigation jobsite where Tower Services, Inc., was working on a Bluegrass Cellular cell phone 400' high tower installing new transmitters and receivers, located at 700 Youngstown Road, Central City, Kentucky. This photo shows the cell phone tower that Mr. Sulfridge fell the approximate 380 feet to the ground below. This photograph was actually taken from Highway 431 South, Central City, Kentucky sitting in the cloverleaf area of the Western Kentucky Parkway.

Description: Photograph # 19 shows the OSH fatality investigation jobsite where Tower Services, Inc., was working on a Bluegrass Cellular cell phone 400' high tower installing new transmitters and receivers, located at 700 Youngstown Road, Central City, Kentucky. This photo shows the cell phone tower that Mr. Sulfridge fell the approximate 380 feet to the ground below. This photograph was actually taken from Highway 431 South, Central City, Kentucky sitting in the cloverleaf area of the Western Kentucky Parkway.

Description: Photograph # 20 shows the OSH fatality investigation jobsite where Tower Services, Inc., was working on a Bluegrass Cellular cell phone 400' high tower installing new transmitters and receivers, located at 700 Youngstown Road, Central City, Kentucky. This photo shows the cell phone tower that Mr. Sulfridge fell the approximate 380 feet to the ground below. This photograph was actually taken from Highway 431 South, Central City, Kentucky sitting in the cloverleaf area of the Western Kentucky Parkway.

Establishment Name : Tower Services, Inc.

CSHO/Optional : S0082 / 019-06
Report #

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SEVERITY ASSESSMENT

HIGH SEVERITY: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses. The most serious injury or illness which is reasonably predictable as a result of an employee's exposure to this hazard would be: **Death.**

PROBABILITY ASSESSMENT

GREATER PROBABILITY: The likelihood that an injury or illness will occur is judged to be relatively HIGH based on the following factors and reasons: This violation is greater because employees were working at heights of approx. 380 and 300 foot elevations on a cell phone tower without fall protection on the day of the accident. The employees had also worked on the tower the previous day without fall protection. The employees were exposed at the point of danger to the hazard of falling for most of the time they were on the tower. The only time there was any protection was when the employees went up and down the tower while attached to a climbing safety device installed on the tower. Once the employees reached working heights, they disconnected from the climbing safety device and worked without any protection from falling. An employee fell approx. 380 feet to his death.